

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Donald R. Chleborad,**

Petitioner-Appellant,

**v.**

**Polk County Board of Review,**

Respondent-Appellee.

**ORDER**

**Docket No. 09-77-1349  
Parcel No. 312/00612-393-233**

On June 21, 2010, the above-captioned appeal came on for consideration before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Donald R. Chleborad, was self-represented and requested the appeal proceed without a hearing. He did not submit any new evidence in addition to the certified record. The Polk County Board of Review designated Assistant County Attorneys Ralph Marasco, Jr. and David Hibbard as its legal representatives. It submitted evidence in addition to the certified record in support of its position. The Appeal Board having reviewed the entire record, and being fully advised, finds:

***Findings of Fact***

Chleborad is the owner of a residentially classified, single-family residence located at 3615 80th Street, Urbandale, Iowa. The property is a one-story home built in 1999, has 1800 square feet of total living area, and a three-car attached garage. There is a 1795 square-foot basement with 816 square feet of "living quarters" finish. The property also has 204 square feet of deck area, 100 square feet of open porch area, and 308 square feet of patio area. The site is 12,844 square feet.

Chleborad protested to the Polk County Board of Review regarding the 2009 assessment. The January 1, 2009, total assessment of Chleborad's property was \$276,600 allocated as follows: \$64,900 in land value and \$211,700 in improvement value.

Chleborad's claim was based on the following grounds: 1) that the assessment is not equitable as compared with the assessments of other like property in the taxing district, under Iowa Code section 441.37(1)(a); 2) that the property is assessed for more than the value authorized by law under section 441.37(1)(b); 3) that there is an error in the assessment under section 441.37(1)(c), asserting the error is over-assessment; and 4) that there has been a downward change since the last assessment under sections 441.37(1) and 441.35. The Board of Review denied Chleborad's protest.

In his appeal to this Board, Chleborad marked the grounds indicating the property is over-assessed; there is an error in the assessment; and there has been a downward change in value. Chleborad's assertion claimed the error is related to the property being assessed for more than authorized by law. Additionally, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider either error or downward change as separate claims and instead consider only the claim of over-assessment.

In his appeal to the Board of Review, Chleborad provided three properties he considered as equity comparables. These properties all sold in 2008, which would qualify them as potential market comparables as well. However, two of the three properties are two-story designs versus the subject property's one-story design. Additionally, one of those two properties transferred as the result of a foreclosure. As such, this sale by statute would be considered abnormal under Iowa Code section 441.21. The third property submitted by Chleborad is a similar one-story home, but is slightly smaller. This property, located at 3603 82nd Street, Urbandale, Iowa, was dismissed by the county appraiser due to its size. The Polk County Board of Review submitted an appraisal by Cris Swaim, of Swaim

Appraisal Services with an effective date of January 1, 2009. Although this property was rejected by the county appraiser, Swaim considered the sale in his analysis.

Chleborad also provided a fourth property which he indicated was a “new sale since the appeal.” This property located at 3508 80th Street, Urbandale, Iowa, transferred in May 2009, after the January 1, 2009, assessment date. This property is also a two-story. Chleborad also offers part of a newspaper article from *The Des Moines Register* dated July 14, 2009. We note the article date is after the January 1, 2009, assessment date, however references 2008 data. We were not provided with a complete copy of the article. The gist of the article is that home sales in June 2009 were even with the number of sales in the same period of 2008. However, there has been a “dip” in prices between these two time periods. The dip is partially attributed to a rise of foreclosure activity. We do not find relevancy in this article regarding the January 1, 2009, assessment of Chleborad’s property.

The Swaim appraisal has an effective date of January 1, 2009. Swaim considered four comparable properties, including one originally submitted by Chleborad in his petition to the Board of Review. This property, located at 3603 82nd Street, Urbandale, sets the low end of the pre-adjusted and adjusted range of value determined by Swaim. It sold for \$245,000 in November 2008 and has an adjusted value of \$241,600. Swaim remarks that this sale, which is located in the subject’s development, “appears to have sold below the market value based upon the other comps used, and it was on the market for only eight days.”

The four sales presented by Swaim have a sales price range of \$245,000 to \$298,000. After adjustments, the indicated range of value is \$241,600 to \$291,500. Removing the sale identified by Swaim as setting the low end, the adjusted range of value tightens to \$260,000 to \$291,500. We agree with Swaim that this sale seems suspicious evidenced by its eight day marketing period, when the other properties submitted as comparable had marketing times ranging from 159 to 336 days, with an average of roughly 250 days.

All of the properties submitted by Swaim are located within three miles of the subject, are one-story design, and offer similar year built, size, and amenities. Sale four presented by Swaim sold after the January 1, 2009 assessment date, however Swaim points out this property was an active listing as of the assessment date and was included to demonstrate competition with the subject at that time. Sale four listed for \$289,000, sold for \$280,000, and has an adjusted value of \$290,400. This comparable required less than 4% net adjustments. Swaim's final opinion of value is \$270,000. We find Swaim's appraisal to be the most credible evidence presented regarding the market value of the subject property as of January 1, 2009.

After reviewing all the evidence, we find the Swaim appraisal is the best evidence presented. The appraisal demonstrates the subject is assessed for more than authorized by law, and its fair market value.

### *Conclusions of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

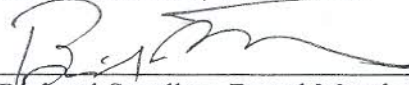
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Chleborad offered only one recent sale of a similar residence however failed to adjust that property to demonstrate comparability to his own property. The Board of Review provided an appraisal completed by independent certified appraiser, Cris Swaim. The Swaim appraisal considered four similar style properties and after adjustments concluded a value opinion of \$270,000 as of January 1, 2009. In the opinion of the Appeal Board, the evidence supports the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we modify the January 1, 2009, assessment of the property located at 3615 80th Street, Urbandale, Iowa, as determined by Polk County Board of Review.

THE APPEAL BOARD ORDERS that Donald R. Chleborad's property assessment be modified. Parcel number 312/00612-393-233, located at 3615 80<sup>th</sup> Street, Urbandale, Iowa, is modified to a total value of \$270,000; representing \$64,900 in land value and \$205,100 to the improvements as of January 1, 2009. The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 27<sup>th</sup> day of July, 2010

  
Karen Oberman, Board Chair

  
Richard Stradley, Board Member

  
Jacqueline Rypma, Board Member

Cc:

Donald R. Chleborad  
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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>7/27</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	